Supreme Court, U.S.
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No. 94-30

In The

Supreme Court of the United States

October Term, 1994

MARGARET CODDINGTON, Personally and as Personal Representative of the Estate of Dean Coddington, Deceased,

Petitioner,

v.

WABASH LIFE INSURANCE COMPANY and GREAT COMMONWEALTH LIFE INSURANCE COMPANY,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED
(as stated by Petitioner)

Where a district court has entered findings of fact which sustain a jury's award of punitive damages, and such findings of fact are required by state substantive law, is the Due Process Clause of the Fifth Amendment violated when the appellate court vacates the award without considering the district court's findings of fact?

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STATEMENT OF THE CASE

Under Montana law, punitive damages are awarded in a bifurcated procedure. During the first phase, the jury considers liability and damages for underlying claims. In addition, the jury determines whether the defendant is liable for punitive damages. To award punitive damages, the jury must find the defendant guilty of actual fraud or actual malice by clear and convincing evidence. § 27-1-221, Mont. Code Ann. If the jury determines that the defendant is liable for punitive damages, the second phase of the bifurcated process is immediately invoked. During that phase, the jury hears evidence regarding the defendant's financial status. After hearing evidence, the jury determines the amount of punitive damages to be awarded.

In this case, at the conclusion of the first phase of the trial both parties submitted special verdict forms to the court. Wabash Life Insurance Company (Wabash) proposed a special verdict form which specifically asked the jury if Wabash had acted with actual malice. Petitioner proposed a special verdict form which did not ask for a finding regarding malice. The district court rejected Wabash's form and gave the jury Petitioner's special verdict form without alteration.

The jury found Wabash liable for breach of contract, violation of the Unfair Trade Practices Act and punitive damages. The jury awarded compensatory damages of $6,383. However, the jury explicitly found that Wabash did not act fraudulently. No findings were made regarding malice.

Wabash moved the court for judgment notwithstanding the verdict on the punitive damage claim pursuant to Rule 50, F.R.Civ.P.[1] Wabash's motion was based on Section 27-1-221, which provides that punitive damages are available only if the defendant is found guilty of actual fraud or actual malice by clear and convincing evidence. Judgment was proper after the first phase of the trial because the jury found that Wabash did not act fraudulently and Petitioner did not present evidence of malice to the jury. Nevertheless, the district court denied Wabash's motion for judgment. In the second phase of the trial, Petitioner presented evidence of Wabash's financial condition. The jury awarded $1.6 million in punitive damages.

Montana statutory law requires the district court judge to review a jury award of punitive damages. § 27-1-221(7)(c), Mont. Code Ann. The judge must "clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b)." The district court entered judgment on the jury's verdict on April 9, 1992, without reviewing the verdict and without issuing the required findings of

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[1] In 1991, Rule 50, F.R.Civ.P., was amended. As amended, the rule refers to "judgment as a matter of law," rather than "directed verdict" or "judgment notwithstanding the verdict." The Annotations to the 1991 Amendments state: "If a motion is denominated a motion for directed verdict or for judgment notwithstanding the verdict, the party's error is merely formal. Such a motion should be treated as a motion for judgment as a matter of law in accordance with this rule."

fact. Wabash filed notice of appeal on April 20, 1992 – the last day possible for timely filing the appeal without becoming vulnerable to execution of judgment. Rule 62(a), F.R.Civ.P. The trial judge issued factual findings on May 5, 1992, long after the district court had been divested of jurisdiction.

On appeal, the Ninth Circuit Court of Appeals affirmed the district court's award of $6,383 on the contract claim. However, the Circuit Court vacated the punitive award, finding that the evidence was insufficient to show clearly and convincingly that Wabash acted with actual malice. This holding was based on a review *de novo* of the district court's denial of Wabash's motion for judgment notwithstanding the verdict. Petitioner now seeks a writ of certiorari based on the decision of the Ninth Circuit Court of Appeals.

REASONS FOR DENYING THE WRIT

I. BECAUSE THE TRIAL JUDGE ISSUED FINDINGS OF FACT IN THE ABSENCE OF JURISDICTION, THE FINDINGS ARE INVALID.

Petitioner's application for a writ of certiorari is based entirely upon findings of fact belatedly issued by the trial judge. As stated by Petitioner, the Question Presented is:

> Where a district court has entered findings of fact which sustain a jury's award of punitive damages, and such findings of fact are required by state substantive law, is the Due Process Clause of the Fifth Amendment violated when

> the appellate court vacates the award without considering the district court's findings of fact?

(Petition, p. i) The factual findings which form the basis of the Petition are invalid. The trial judge had no jurisdiction to issue the findings.

The district court entered judgment on the jury's verdict on April 9, 1992. Pursuant to Rule 62(a), F.R.Civ.P., Petitioner could enforce and execute the judgment on the verdict on April 20, 1992. Wabash submitted a supersedeas bond and filed notice of appeal on April 20, 1992, thereby staying execution of judgment. Rule 62(d), F.R.Civ.P. On May 5, the trial judge entered findings regarding the jury's verdict.

The trial judge lacked jurisdiction to enter the findings. As stated by the Seventh Circuit Court of Appeals:

> As a rule, only one tribunal handles a case at a time. "[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." (citations omitted) Some one must be in charge of a case; simultaneous proceedings in multiple forums create confusion and duplication of effort; the notice of appeal and the mandate after its resolution avoid these by allocating control between forums.

Apostol v. Gallion, 870 F.2d 1335, 1337 (7th Cir. 1989).

Similarly, in *Venen v. Sweet*, 758 F.2d 117, 120-1 (3rd Cir. 1985), the Third Circuit Court of Appeals stated:

> As a general rule, the timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal. (citations omitted) "Divest" means what it says – the power to act, in all but a limited number of circumstances, has been taken away and placed elsewhere. . . .

This Court recognizes the rule that filing the notice of appeal generally divests the district court of jurisdiction over the case. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982).

Once the notice of appeal is filed, the district court's power to act is limited. *Venen*, 758 F.2d at 121, n. 2. The district court may determine an application for attorney's fees, issue orders regarding the filing of bonds or modify injunctions. *Id.* However, the district court loses its control over the aspects of the case involved in the appeal. *Id.* In this case, the district court clearly did not have jurisdiction to make factual findings regarding the issues on appeal. The district court docket makes clear that the findings were made after the court lost jurisdiction; the May 5 order is not listed on the district court docket sheet. (See Appendix)

Wabash's notice of appeal, filed on April 20, 1992, divested the district court of jurisdiction. The findings issued by the trial judge on May 5, 1992, are invalid. Petitioner's application for writ of certiorari is based solely on those findings. As a result, the writ should be summarily denied. Moreover, Petitioner has not established that the Ninth Circuit Court of Appeals did not

review the district court findings or that review of the findings would have changed the result on appeal.

II. THE COURT OF APPEALS APPLIED THE PROPER STANDARD OF REVIEW IN DETERMINING THAT THE DISTRICT COURT ERRED IN DENYING WABASH'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Petitioner claims that the Ninth Circuit Court of Appeals should have applied the "clear error" or the "abuse of discretion" standard in reviewing the award of punitive damages. Petitioner's argument is completely without merit. Wabash appealed the district court's denial of Wabash's motion for judgment notwithstanding the verdict. The Ninth Circuit Court of Appeals correctly stated that the denial of a motion for JNOV is reviewed *ae novo* citing *Erickson v. Pierce County*, 960 F.2d 801, 804 (9th Cir. 1992), *cert. den.* ___ U.S. ___, 113 S.Ct. 815 (1992). (Petitioner's Appendix, 3A) The Ninth Circuit Court of Appeals consistently applies the *de novo* standard of review to appeals regarding the grant or denial of JNOV. See, e.g., *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992).

Other courts also emphàtically accept the *de novo* standard in reviewing the grant or denial of JNOV motions. *Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 583 (6th Cir. 1994); *Keenan v. Computer Associates Int., Inc.*, 13 F.3d 1266, 1268 (8th Cir. 1994); *Sherrin v. Northwestern Nat'l Life Ins. Co.*, 2 F.3d 373, 377 (11th Cir. 1993); *Boczar v. Manatee Hospitals & Health Systems, Inc.*, 993 F.2d 1514, 1516 (11th Cir. 1993); *Ross v. Black & Decker, Inc.*, 977 F.2d

1178, 1182 (7th Cir. 1992); *Amerinet, Inc. v. Xerox Corp.*, 972 F.2d 1483, 1505 (8th Cir. 1992); *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 821 (Fed Cir. 1992); *Hill v. Marshall*, 962 F.2d 1209, 1213 (6th Cir. 1992); *Goodwin v. Enserch Corp.*, 949 F.2d 1098, 1101 (10th Cir. 1991); *Fleming v. County of Kane*, 898 F.2d 553, 559 (7th Cir. 1990).

Clearly, the Ninth Circuit Court of Appeals did not err in applying the *de novo* standard to its review of the denial of Wabash's motion for judgment notwithstanding the verdict. Petitioner provides absolutely no authority to support the contention that the "clear error" or "abuse of discretion" standards should apply to review of JNOV. The Court of Appeals properly applied the *de novo* standard of review.

III. PETITIONER HAS CITED NO LEGITIMATE BASIS FOR THE GRANT OF A WRIT OF CERTIORARI PURSUANT TO RULE 10.

"A review on writ of certiorari is not a matter of right, but of judicial discretion." Rule 10, Rules of the Supreme Court of the United States. Generally, a writ is only granted if:

> a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Rule 10.1.a, Rules of the Supreme Court of the United States.

Petitioner has not identified the basis of its petition. Petitioner's brief reveals that no reason exists to grant the writ. The Ninth Circuit Court of Appeals' decision does not create a conflict between the circuits. The appeal does not involve a federal question. Finally, the court of appeals did not depart from the accepted and usual course of judicial proceedings. The court properly reviewed the district court's award of punitive damages. Based on established law and procedures, the Court of Appeals reversed the punitive award and affirmed contract damages.

IV. PETITIONER'S APPENDIX MISSTATES THE TRIAL JUDGE'S ORDER DATED MAY 5, 1992.

Petitioner's request for a writ is based almost entirely upon allegations concerning findings of fact issued by the trial court after it had been divested of jurisdiction. In the appendix, Petitioner recreated the findings on pages 14-A through 17-A. The findings as represented in the appendix contain several significant errors.

The appendix indicates that the order containing the findings used the following jurisdictional caption:

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

The order was not authorized by the Court of Appeals. Rather, the order was issued by the trial judge and the caption actually stated:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

In addition, the order as recreated in Petitioner's appendix is not dated. The actual order is dated May 5, 1992, weeks after the district court lost jurisdiction of the case.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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July 27, 1994

CODDINGTON vs. WABASH LIFE et al.
CV 90-208-BLG-JDS

DATE	NR	PROCEEDINGS
10-29-90	1	Civil cover sheet.
10-29-90	2	COMPLAINT & JURY DEMAND. Is 'd sms. Hd'd O&3 to runner along w/conf complt.
1-8-90	3	Filed orig Summons w/attached Notice & Ack of Svc by Mail as Δs – served 11-5-90 by Svc on Comm of Insurance in Helena MT.
11-21-90	4	Filed Notice of Appearance of Guy W. Rogers of Anderson, Brown etc. for Δ Standard Life, w/c/s.
1-3-91	5	Filed Δ Standard's Motion to Dismiss w/c/s.
1-8-91	6	Filed Pltf's Praecipe for Def of Δ Great Commonwealth w/attachments.
1-8-91	7	Filed *DEFAULT of Δ Great Commonwealth & mail cpy to Co* Paoli.
1-14-91	8	Filed Standard's Cert of Servce (for disc).
1-18-91	9	filed order that deft Standard Life & Accident Ins. Co's motn to dismiss is denied & deft has 15 days from date of this order to furth plead.
2-1-91	10	Filed Δ Standard's *ANSWER TO COMPLAINT, CROSS CLAIM AGAINST GREAT COMMONWEALTH LIFE INS CO & CROSS-CLAIM AGAINST ALL CO* Δs w/c/s & attachments.
2-5-91	11	Filed orig Summons to Δ ICH Companies w/Return – served 1-23-91.

2-21-91	12	Filed MTD of Δ Wabash Life, ICH, & Great Commonwealth Life, w/c/s.
2-27-91	13	Filed ORDER that Wabash, ICH & Great Commonwealth' MTD is denied and Δs have 15 days to further plead, c/c/s (4).
3-14-91	14	Filed ANSWER of Wabash Life Ins. CO. and GREAT Commonwealth Life Ins. CO. w/c/s.
3-19-91	15	Filed Notice of Sub of Counsel – Earl Hanson instead of Ward Swanser for Δ ICH w/c/s.
3-20-91	16	Filed ORDER SETTING PPT in Blgs MT before JDS at 9:15 AM on April 2 1991 & ccs 4.
3-25-91	17	Filed ANSWER OF ICH COMPANIES w/c/s.
4-4-91	18	Filed MEMO OF PPT CONFERENCE Held 4-4-91 & ORDER: (1) Status Reports due week of 10-?-91; (2) Complete all discovery no later than 11-25-91; (3) Serve all written disc within time periods; (4) ID & address of expert witnesses no later than 45 days prior to orig discovery cutoff date; (5) File all Mots by 12-9-91 for oral agmt by 1-30-92; (6) Convene att's conf during week of March 9 1992; (7) File FPT order by March 20 1992; (8) FPT conf before JDS in Blgs MT at 9:00 AM on March 20 1992; (9) Give clk's office notice re jury panel by April 2 1992; (10) Trial before JDS in Blgs MT at 9:00 AM on April 6 1992 as #1; (11) Settlement conf may be set before US Mag & ccs.

7-10-91	19	Filed MTD for Lack of Jurisdiction Over the Subject Matter & Lack of Jurisdiction Over the Person Purs to Rul 12(b)(1) and 12(h)(3), w/c/s.
7-10-91	20	Filed Memo in Sprt of above motion, w/c/s.
7-10-91	21	Filed Aff of Phillip E. Allen, w/c/s.
8-1-91	22	Filed ORDER of JDS that Deft ICH Mot to dims is granted & ICH Companies is dismissed from this action & judgmt is to be entered in favor of ICH. Pltf may proceed on her complaint as to the remaining defts only. ccs-4
8-1-91	23	Filed and Entered JUDGMENT as to doc. #22. ccs-4 VOL 52 PAGE 2379
8-12-91	24	Filed Stip between Pltf & ICH Companies: (1) jmt ent 8-1-91 be held in abeyance; ___ depos of Δ Wabash employees are taken; (2) co for stipulating parties had agreed these depos. be taken before Pltf's co. responded in Δ ICH Co.'s Mot to Dism & lodged po – JDS.
8-28-91	25	Filed ORDER of JDS that Judgment entered on 8-1-91 is held in abeyance til depos of Δ Wabash Life Ins. employees can be taken, c/c/s (5).
9-13-91	26	Filed ___'s Notice of Depos of: Nancy Little, Loy Guthrie, John E. Ussery, Lee G. Baker, all on 9-27-91 in Colorado, w/c/s.
10-1-91	27	Filed ICH's Cert of Proof of Srv & Notice re disc, w/c/s.

10-1-91	28	Filed ___'s M/Compel purs to Rule 37 of FRCP & Sprting Memorandum, w/c/s.
10-7-91	29	Filed Pltf's Status Report, w/c/s.
10-7-91	30	Filed Δ Wabash Life & Great Commonwealth's Status Report, w/c/s.
10-7-91	31	Filed Δ ICH's Status report w/c/s.
10-10-91	32	Filed Deft Standard Life's Status report w/c/s.
10-11-91	33	Filed Wabash's Expert Witness disclosure w/c/s.
10-15-91	34	Filed Pltf's Notice of expert witnesses w/c/s.
10-21-91	35	Filed ¶s Notice of Srv of Disc, w/c/s.
10-21-91	36	Filed Δ's Brf in Opp to ¶'s M/Compel, w/c/s.
10-28-91	–	Issue Depo Sub Duces Tecum re 10-31-91 & hand O + 1 to runner for Wabash.
10-31-91	37	Filed Δ's Notice of Depo of Margaret Coddington on 10-31-91 in Blgs, w/c/s.
11-5-91	38	Filed ¶'s Reply to Δ's Brief of ¶'s Motion to Compel, w/c/s.
11-12-91	39	Filed Pltf.'s Notice of Service of Discovery.
11-14-91	40	Filed Δ Wabash Life Ins Co & Great Commonwealth Life Ins Co Notice of Depos on 11-21-91 in Blgs MT of Annette Johnson w/c/s.
12-4-91	41	Filed Δ Wabash Life Ins. Co. & Great Commonwealth's Depo Sub Duces Tecum to Pltf for 10-31-91 in Blgs MT & Aff of Service -served 10-29-91.

10-5-91	42	Filed ORDER OF JDS re Pltf Mot to Compel – re Req for Prod No. 1(a); Moot; #2 – Δs shall provide info offered as a compromise in Δ's Brief in Opp to Pltf.'s Mot to Compel p. 5 – re claims filed w/Montana Ins Comm substantially similar to present action. #3 – claims filed w/Insurance Commissioners in states other than MT – denied. #4 – List of all law suits filed against Δs on substantially similar policies – granted as to lawsuits filed in MT & denied as to suits in other states. #5 – Δs as prevailing party have opp for hearing & entitlement to reasonable expenses incurred in opposing Mot & if expenses are sought – Δs shall provide stip of expenses or pet Crt for Hrg & ccs.
12-9-91	43	Filed ΔStandard Life's Motion for Sum Jmt w/c/s.
12-9-91	44	Filed Δ Wabash Life Ins Co & Great Commonwealth Life Ins Co Motion for Sum Jmt w/c/s
12-10-91	45	Filed ¶'s Notice of Telephone Depo of Phillip E. Allen on 12-11-91, w/c/s.
12-16-91	46	Filed Defts Wabash & Ct. Commonwealth's Brf in sup of Motion for SJ w/attmts & w/c/s.
12-18-91	47	Filed Pltf.'s Mot for Ext of Time to file Brief in Response to Δ Wabash Motion for Sum Jmt & co Sheehy objects & w/c/s & lodged Po – JDS

12-31-91	48	Field ORDER OF JDS that pltf is granted an ext until 1-30-92 to file a resp. brief to deft Wabash's Mot for SM. ccs-5
1-8-92	49	Filed Stip for Dism of Δ Standard Life. Lodged prop ord, to JDS
1-9-92	50	Filed Notice of Hrg for Wabash's M/SJ on 1-30-92 @ 10:00 a.m., w/c/s.
1-10-92	51	Filed Order for JDS that action is dism w/prej as against Δ Standard Life and Accident Ins. Co. reserving, however, whatever rights the ¶ may have against the other Δs. The cross-claims filed by Standard Life are also dism w/prej, c/c/s (4).

Begin Volume Two

1-21-92	52	Filed pltf.'s Notice of Service of Discovery.
1-21-92	53	Filed Pltf.'s Response to Δ ICH Motion to Dism for Lack of Jurisdiction w/c/s.
1-21-92	54	Filed Pltf.'s Brief in Opp to Δ's Motion for SumJmt w/c/s & att.
1-21-92	55	Filed Pltf.'s Mot for Leave to File Discovery re Mot for Sum Jmt w/c/s & Lodged Po – JDS.
1-23-92	56	Filed AFFIDAVIT of Brian Willoughby, M.D.
1-28-92	57	Filed Defts' reply brief in sup of motion for SJ w/c/s & attchmts.
1-30-92	–	Ent rec of Proc; Deft Wabash Mot for SJ; Stmts by cnsl Sheehy; Oppo by cnsl Warren; Reply by deft cnsl Sheehy; Crt deems matter fully submitted & denies motion on each count.

1-29-92	58	Filed copy of Affidavit of Martha Miller for Wabash Ins. Co.
1-31-92	59	Filed ORDER of JDS that the M/To File Disc Docs is GRANTED, c/c/s (5).
2-20-92	60	Filed DEPOSITION of NANCY LYNN LITTLE.
2-20-92	61	Filed DEPOSITION OF LOYE GUTHRIE.
2-20-92	62	Filed DEPOSITION OF JOHN E. USSERY.
2-20-92	63	Filed DEPOSITION OF MARGARET CODDINGTON.
2-20-92	64	Filed DEPOSITION OF PHILLIP ELWOOD ALLEN.
2-20-92	65	Filed DEPOSITION OF LEE G. BAKER.
2-28-92	66	Filed ¶'s Notice of Service of Discovery, w/c/s.
3-3-92	67	Filed ¶'s Motion in Limine, w/c/s. (w/Sprt Brf)
3-11-92	68	Filed Δ Wabash's M/Compel, w/c/s.
3-11-92	69	Filed Aff of Ward Swanser, w/c/s.
3-11-92	70	Filed Brf in Sprt of M/Compel, w/c/s.
3-19-92	71	Filed Deft Wabash Ins. Brf in Oppo to Ptlf's Mot in limine w/c/s.
3-20-92	72	Filed ORDER of JDS that all prop. jury inst. in this case are required to be filed on 3/30/92. Jury inst. are to be submitted in proper format w/this order. cpys handed to cnsl during FPT conf today.
3-24-92	73	Filed ¶'s Reply Brf in Sprt of ¶'s M/Limine, w/c/s.

3-26-92	74	Filed ORDER of JDS that Δ Wabash's M/Compel is granted and that ruling on ¶'s M/Limine is reserved for the time of trial, c/c/s (4).
3-26-92	75	Filed ORDER of JDS that 1 Mag Judge LBE will conduct sett conf on 3-31-92 @ 10:00 in Msla. 2) Brochures due on 3-30-92. 3) Failure to comply may result in costs. c/c/s (4).
3-26-92	–	Mailed 2 vols of file to Msla by cert mail #P 515 785 070.
3-30-92	76	Filed Pltff.'s Trial Brief w/c/s.
3-30-92	77	Filed Pltf.'s Proposed Preliminary Jury Instructions w/c/s.
3-30-92	78	Filed Δ Wabash's Submission of Objects to Depo Excerpts w/c/s & att.
3-30-92	79	Filed Δ Wabash's Proposed Jury Instructions w/c/s & att.
3-30-92	80	Filed Δ Wabash Life Ins Co & Great Commonwealth Trial Brief w/c/s.
3-30-92	81	Filed Δ Wabash Life Ins Co & Great Commonwealth Objections to Pltf.'s Exhibits w/c/s.
3-30-92	82	Filed Δ Wabash's Explanation of Instructions w/c/s.
3-31-92	83	Filed Δ ICH Companies' Trial Brief w/c/s & att.
3-30-92	–	Lodged Proposed Final Pretrial Order. – to JDS after determining if matter may have settled during settlement conf. 3-31.

Begin Volume 4

4-2-92	84	Filed FINAL PRETRIAL ORDER, signed by cnsl & JDS. ccs-3

4-2-92	85	Filed Δ Wabash's Objections to Pltf.'s Instructions & Submission of Alternative Instructions w/c/s & Instructions.
4-2-92	86	Filed Pltf.'s Objections to Δ Wabash's Proposed Instructions w/c/s.
4-3-92	87	Filed Pltf.'s First Point Brief w/c/s & Att.
4-3-92	88	Filed Wabash's Motion in Limine re emotional distress w/c/s.
4-3-92	89	Filed Wabash's Brief in Supp of above Motion w/c/s.
4-3-92	90	Filed Wabash's Response to Pltf.'s First Point Brief w/c/s.
4-3-92	91	Filed Pltf.'s Response to Δ Wabash's Objections to Depo Testimony w/c/s.
4-3-92	92	Filed Pltf.'s Request for Voir Dire w/c/s.
4-6-92	93	Filed Δ Wabash's Record of Obj to Pltf.'s Prop Depo Testimony w/c/s.
4-6-92	94	Filed Δ Wabash's Point Brief re Admissibility of Blue Cross/Blue Shield Info & Offer of Proof w/c/s & att.
4-6-92	95	Filed Δ Wabash's Point Brief re Admissibility of Ex A, Excerpts from Black Book w/c/s.
4-6-92	96	Filed Δ Wabash's Point Brief re Admissibility of Great Commonwealth Written Materials w/c/s.
4-6-92	97	Filed Δ Wabash's Point Brief re Inadmissibility of 'Cancer Facts & Figures' w/c/s.
4-6-92	98	Filed Δ Wabash's Point Brief re Requirement that Wabash Speciman Policy Discussed in Depos to be read at Trial be adm into Evidence w/c/s.

4-6-92	99	Filed Δ Wabash's Point Brief re Inadmissibility of Ex. B – The Missouri Ins Dept review w/c/s.
4-6-92	100	Filed State Auditor's office Mot to Quash Subpoena w/c/s
4-6-92	–	ENT REC OF PROC BEF JDS JURY TRIAL DAY one All pres & ready to proceed. In Chambers – Agmt re Mots in Limine & exhibits not obj to are deemed adm. In Crtroom – Clerk takes roll & draws 15 names & 1st oath adm to all & intro of parties & Crt & parties voir dire. & pass. Arizona Strike Method of challenges & w/all pres, clk reads names of 7 jurors & 2nd oath adm & Opening Statements & depo testimony is read in to record on behalf of Pltf. & recess till 9 AM 4-7-92.
4-7-92	–	ENT REC OF PROC BEF JDS JURY TRIAL DAY 2 All pres & ready to proceed. Witnesses S/E & exhibits off'd & rec'd & Pltf rests & Δ co moves for Directed Verdict & argument & & Crt denies Mot to Dism except as to emotional distress which crt takes under adv. & exhibits off'd & rec'd & w/jury absent, Crt excuses Δ ICH & Pltf co moves for directed verdict & Crt denies & Crt excuses jury & parties settle instructions & recess till 9:30 AM 4-8-92.

4-8-92	–	ENT REC OF PROC BEF JDS JURY TRIAL DAY 3 ALL PRES ___ Crt instructs jury as to law & Closing Agmts by cos & clerk draws name of alternate juror & she is excused (Elaine Frey). Clk adm oath to Bailiffs & jury retires to delib – jury returns several times w/questions – crt & cos in crtroom while ques is addressed – jury retires to delib & jury later returns w/Verdict which crt reads in to record & jury is polled & Δ co moves for Jmt Notwithstanding the Verdict & Crt denies & all to return April 9 1992 to deliberate punitive damages.
4-9-92	–	ENT RECORD OF PROC BEFORE JDS JURY TRIAL #4 All pres re Punitive Damages & Pltf co calls witness John Ussery, S/E & (cos eaived Opening Stmts). Pltf & Δ co offer exhibits – adm. Pltf co calls witness Lee Baker S/E then Pltf resbs & no rebuttal then Closing Stmts & jury retires to delib. Later cos & Crt in crtroom to address possible improper closing & jury later returns w/Verdict – clk reads in to record & Crt thanks & Excuses jury.
4-8-92	101	Filed Refused Instruction.
4-8-92	102	Filed ORIGINAL INSTRUCTIONS 1-53.
4-8-92	103	Filed INSTRUCTIONS JURY USED.

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4-8-92	104	Filed VERDICT FORM (1) Δ breached cancer insurance contract – yes. (2) Did Δs violate 33-18-201(1) MCA – misrepresent pertinent facts in insurance policy relating to coverage at issue? yes. (4) Did Δs' violation of 33-018-201(1) MCA cause Pltf damages – yes. (5) Did Δs violate 33-18-201(4) – refuse to pay claims without conducting a reasonable investigation based on all available information – yes. (6) Did Δs' violation of 33-18-201(4) cause Pltf damages – yes. (7) Do you find Δs' conduct fraudulent – no. (9) State total amount of damages you find compensate Pltf for cancer insurance benefits – $6,383.00 (10) Do you find Δs liable for punitive damages – yes. Signed jury foreperson Brad Matteson.
4-9-92	105	Filed Δ Wabash's Brief in Support of Motion for Jmt Notwithstanding Verdict On Issue of Punitive Damages w/c/s.
4-9-92	106	Filed Δ Wabash's Mot for Supp Instruction w/c/s & att.
4-9-92	107	Filed VERDICT re Punitive issue – we award punitive damages in amount of $1,600,000.00 & signed jury foreperson.
4-9-92	108	FILED & ENT JMT AS ABOVE & ccs.

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4-20-92	109	Filed Agreement by Wabash Life Ins. Co. in accordance with Rule 290-6 and 6 USC Sec. 15 w/power of atty attached.
4-20-92	110	Filed ORDER that the Agreement filed by Wabash Life Ins. Co. on this date is approved by this Court. c/c/s (3).
4-20-92	111	Filed Motion for Stay of Execution upon Appeal by Deft. Wabash Life Ins. Co. and Great Commonwealth Life Ins. Co. w/ctf of svc thereon.
4-20-92	112	Filed ORDER that execution of the judgment entered by this court on April 9, 1992 in the above-captioned cause is hereby stayed pending appeal. c/c/s (3).
4-20-92	113	Filed Deft's Wabash Life Ins. Co. and Great Commonwealth Life Ins. Co.'s Notice of Appeal.
4-20-92	114	Filed ORDER OF JDS THAT Meals & or lodging be provided for jurors & cert cpy to MR.